

Montana Water Court
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FILED
12/22/2022
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Vicki Heiser
41G-0176-R-2020
Ostrem, Eyvind
41.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: JH Associates LLC; ~~Lonna Johnson; Rich Johnson~~

OBJECTOR: JH Associates LLC

41G-0176-R-2020
41G 195582-00
41G 195584-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water right claims 41G 195582-00 and 41G 195584-00 appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) issued February 15, 2018.

The claims each received an objection from JH Associates, LLC (JH), and claim 41G 195584-00 received a Notice of Intent to Appear from the USDI Bureau of Reclamation (United States). The claims were consolidated into case 41G-0176-R-2020 to address the objections.

FINDINGS OF FACT

1. On July 8, 2022, the United States withdrew its notice of intent to appear in this case.

2. JH objected to the ownership and place of use of claims 41G 195582-00 and 41G 195584-00. On October 14, 2022, JH and claimants Rich and Lonna Johnson filed a Settlement Stipulation (Stipulation) with the Court to resolve JH's objections. The Stipulation, signed by Ryan Mattick for JH, and Rich and Lonna Johnson, states that although the 80 acres currently owned by the Johnsons in the S2NE of Section 27, T1S, R5W was originally claimed, it has never been irrigated with these water rights. The Stipulation therefore requests the following modifications to the ownership, maximum acres and place of use of claims 41G 195582-00 and 41G 195584-00:

Owners: ~~Rich Johnson~~

~~Lonna Johnson~~

JR Associates LLC

Maximum Acres: ~~233.00~~ **153.00**

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	153.00		SW	27	1S	5W	Madison
2	80.00		S2NE	27	1S	5W	Madison

PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA. If a claimant agrees to reduce or limit an element of a claim, the water court does not need to determine whether the burden of proof has been met. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA, must be applied. Rule 17 (c), W.R.Adj.R.2.

CONCLUSIONS OF LAW

1. The Stipulation's requested changes are reductions that can be accepted without analysis of the burden of proof. The Stipulation is accepted, and the modifications described in Finding of Fact No. 2 above should be made. These modifications resolve JH's objections. The United States' NOIA has been withdrawn.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the above-described modifications.

A post-decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

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Service via USPS Mail

Lonna Johnson
Rich Johnson
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 195582-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: JH ASSOCIATES LLC
385 WATERLOO RD
WHITEHALL, MT 59759 3362

Priority Date: OCTOBER 2, 1953

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 153.00

Source Name: SPRING, UNNAMED TRIBUTARY OF JEFFERSON RIVER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	27	1S	5W	MADISON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	153.00		SW	27	1S	5W	MADISON

Total: 153.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

195582-00

195584-00

206715-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 195584-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: JH ASSOCIATES LLC
385 WATERLOO RD
WHITEHALL, MT 59759 3362

Priority Date: OCTOBER 15, 1895

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 8.83 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 153.00

Source Name: JEFFERSON RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSW	33	1S	5W	MADISON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	153.00		SW	27	1S	5W	MADISON

Total: 153.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

195582-00 195584-00 206715-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

195584-00 214905-00